

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	

**OPPOSITION OF THE  
NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION  
TO ACS PETITION FOR WAIVER**

The National Cable & Telecommunications Association (NCTA)<sup>1</sup> opposes the petition for waiver filed by ACS of Anchorage, Inc., ACS of the Northland, Inc., ACS of Fairbanks, Inc., and ACS of Alaska, Inc. (collectively ACS).<sup>2</sup> ACS asks the Commission to waive the rules for receipt and use of universal service incremental Connect America Fund (CAF) Phase I support that ACS agreed to comply with only a few weeks ago, on July 24, 2012. There is no good cause whatsoever to grant ACS's request; in fact, ACS's sole justification is that it did not adequately conduct due diligence when it agreed to accept incremental CAF Phase I support. The Commission should deny ACS's waiver petition.

Pending implementation of a long-term high-cost broadband support mechanism (CAF Phase II), the Commission adopted a "simplified, interim approach" for CAF Phase I, which is "designed to provide an immediate boost to broadband deployment in areas that are unserved by

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<sup>1</sup> NCTA is the principal trade association for the U.S. cable industry, representing cable operators serving more than 90 percent of the nation's cable television households and more than 200 cable program networks. The cable industry is the nation's largest provider of broadband service after investing over \$185 billion since 1996 to build two-way interactive networks with fiber optic technology. Cable companies also provide state-of-the-art competitive voice service to more than 23 million customers.

<sup>2</sup> ACS of Anchorage *et al.* Petition for Waiver, WC Docket Nos. 10-90 and 05-337 (Sept. 29, 2012) (ACS Petition).

any broadband provider.”<sup>3</sup> Under CAF Phase I, the Commission divided \$300 million among price cap regulated incumbent local exchange carriers (LECs).<sup>4</sup> Each of these incumbent LECs was given an opportunity to accept all or a portion of their allotment.<sup>5</sup> For each \$775 in incremental CAF Phase I support accepted, the incumbent LEC is obligated to provide broadband at speeds of 4Mbps downstream and 1 Mbps upstream and with sufficient latency and usage limits to one unserved location.<sup>6</sup> Consequently, there are three fundamental requirements any incumbent LEC must meet to receive incremental CAF Phase I support: (1) provide 4/1 Mbps broadband, (2) to unserved locations, (3) at \$775 per location.<sup>7</sup>

On July 25, 2012, ACS accepted the full amount of incremental CAF Phase I support allocated to it by the Commission, \$4,185,103, committing to provide 4/1 Mbps broadband service to 5,401 unserved locations.<sup>8</sup> Just two months later, ACS filed this petition seeking a waiver of each of the three fundamental CAF Phase I requirements.

First, ACS claims that, upon further analysis, it has concluded that it cannot serve 5,401 locations for \$775 each, but instead will serve less than half that number at that rate, 2,163.<sup>9</sup> ACS asks the Commission to waive the \$775 per location requirement, and instead provide ACS

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<sup>3</sup> *Connect America Fund*, WC Docket No. 10-90 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17715, 17717, ¶¶ 134, 137 (2011) (*CAF Order*).

<sup>4</sup> *Id.* at 17712-13, ¶ 128.

<sup>5</sup> *Id.* at 17717, ¶ 138.

<sup>6</sup> *Id.* at 17720-22, ¶¶ 146-47.

<sup>7</sup> 47 C.F.R. § 54.312(b)(2).

<sup>8</sup> Letter from Amy Gardner, Vice President Revenue Assurance, Alaska Communications Systems Group, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 10-90 and 05-337, at 1 (July 24, 2012).

<sup>9</sup> ACS Petition at 6-7.

with \$5,000 per location to serve 115 locations and \$7,000 per location for 248 locations.<sup>10</sup>

Second, ACS asks for waiver of the requirement that it provide 4/1 Mbps broadband to areas that are currently unserved with any broadband so that it can upgrade locations that are currently receiving broadband at speeds slower than 4/1 Mbps.<sup>11</sup> Finally, ACS asks the Commission to waive the requirement that incremental CAF Phase I support be used only in unserved areas so that ACS can use support to provide service in areas that are already served with broadband by fixed wireless providers.<sup>12</sup> ACS admits, however, that even if the Commission were to grant this request it would still not serve the full 5,401 locations to which it committed on July 24, 2012.<sup>13</sup>

As justification for granting its waiver request, ACS argues that (1) the Wireline Competition Bureau has informed it that 2,100 of its identified locations are shown as served on the National Broadband Map and are therefore ineligible for incremental CAF Phase I support; (2) ACS cannot make a business case for serving all 5,401 locations for \$775 each; and (3) the \$775 per location amount is too low.<sup>14</sup>

The Commission should reject the requested waivers. None of the reasons offered by ACS represent “special circumstances” that would justify waiver of the CAF Phase I rules. Rather, all three reasons cited by ACS existed and were known to ACS, or should have been known, at the time it made its CAF Phase I commitment on July 24, 2012. Moreover, unlike other waiver requests that at least identify some purported benefit to waiving CAF Phase I rules

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<sup>10</sup> *Id.* at 8. Under this scenario, ACS will be receiving the same amount of incremental CAF Phase I support that it accepted on July 24<sup>th</sup>, i.e., more than \$4 million, but rather than providing broadband to 5,401 currently unserved locations it will serve only 2,526 locations with the money.

<sup>11</sup> *Id.* at 9-11.

<sup>12</sup> *Id.* at 11-12.

<sup>13</sup> Instead, it would serve only 3,063 locations within the \$775 per location limit, and could serve 567 additional locations with CAF Phase I support of \$3,200 per location. *Id.* at 12.

<sup>14</sup> *Id.* at 15-23.

(i.e., delivering broadband to additional customers more quickly), a grant of this petition would actually mean that ACS would provide fewer customers with broadband at a higher cost than it agreed to when it accepted CAF Phase I support.

As noted above, ACS is seeking \$5000-7000 per location to extend broadband to some locations. There is no justification whatsoever for allowing ACS to expend limited universal service dollars in such an excessive manner. Instead, the public interest would be better served by the Commission repurposing unused CAF Phase I money, as it stated in the *CAF Order*, for other uses, such as increasing broadband adoption programs, or reducing the contribution factor.<sup>15</sup>

ACS's request for relief to allow it to use CAF Phase I support to upgrade its customers from lower speed broadband to 4/1 Mbps broadband service is equally unconvincing. The Commission addressed and rejected this very argument in April in the *CAF Second Reconsideration Order*.<sup>16</sup> Specifically, the Commission said:

[S]everal parties ask us to modify the broadband deployment requirement for CAF Phase I to permit carriers to meet their obligations not just by deploying broadband to previously unserved locations, but also by upgrading service to locations that are “underserved”—locations, for example, that are served by broadband at speeds less than the 4 megabits downstream required for new deployments in CAF Phase I. . . . however, the Commission’s focus in CAF Phase I was to spur broadband deployment to consumers who lack access to broadband, not to improve service for those who already have access to some form of high-speed Internet access.<sup>17</sup>

ACS's waiver petition seeks the same relief which the Commission has rejected and should be denied on the same basis.

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<sup>15</sup> *CAF Order*, 26 FCC Rcd at 17717, ¶ 138 n.221.

<sup>16</sup> *Connect America Fund*, WC Docket No. 10-90 *et al.*, Second Order on Reconsideration, 27 FCC Rcd 4648, 4655, ¶ 21 (2012) (*CAF Second Reconsideration Order*).

<sup>17</sup> *Id.* (footnote omitted).

The Commission also addressed and rejected in the *CAF Second Reconsideration Order* the argument that it should permit price cap LECs to use CAF Phase I support in census blocks that already have broadband service from other providers.<sup>18</sup> Specifically:

The Commission chose in CAF Phase I, however, to focus limited resources on deployments to extend broadband to some of the millions of unserved Americans who lack access to broadband entirely, rather than to drive faster speeds to those who already have service. We are not persuaded that the decision about the more pressing need was unreasonable. Moreover, we are not persuaded that permitting CAF Phase I recipients to overbuild other broadband providers represents the most efficient use of limited CAF Phase I support.<sup>19</sup>

For the same reasons the Commission should reject ACS's request for waiver.

### **CONCLUSION**

The Commission should deny ACS's petition for waiver. The Commission established incremental CAF Phase I support with specific requirements to serve a very specific, interim purpose. There is no justification for waiving the carefully crafted and very clear parameters of CAF Phase I support to allow ACS to receive multiple thousands of dollars per location or to overbuild existing fixed wireless broadband providers. To the extent ACS cannot comply with the rules of the program, it should not receive support.

Respectfully submitted,

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<sup>18</sup> *Id.* at 4652-53, ¶¶ 14-15.

<sup>19</sup> *Id.* at 4653, ¶ 15 (footnote omitted).